

01658

Mr. Macfarther
Proc. I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-188636

DATE: April 5, 1977

MATTER OF: Educational Media Division

DIGEST:

Protest filed with GAO more than 10 working days after protester was notified by contracting activity that its initial protest filed with the activity was denied is untimely filed with GAO and is, therefore, not for consideration.

Educational Media Division (EMD) protests the use of specifications which are allegedly proprietary to a single manufacturer by the Department of the Army, Sacramento Army Depot, in its invitation for bids No. DAAG08-77-B-0019.

The protest on this matter, which EMD filed originally with the contracting activity, was denied by the contracting officer by letter of February 1, 1977. This denial letter was received by EMD sometime between February 1 and February 15, because by letter of February 15 EMD resubmitted its grievance to the contracting officer. By letter of March 2 the contracting officer affirmed his previous denial and advised EMD to contact our Office should it wish to pursue the matter further. Our Office received such a request on March 21.

Our Bid Protest Procedures, however, provide at 4 C.F.R. § 20.2(a) (1976) that:

"If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office [must be] filed within 10 days of formal notification * * * of initial adverse agency action * * *."

The fact that the protester may again appeal the matter to the contracting activity does not affect the above-cited time requirement with regard to when the 10 days begin to run. Florida Filters, Inc., B-186995,

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October 6, 1976, 76-2 CPD 316. At the latest EMD received notice of the initial adverse agency action on February 15. The protest filed with our Office on March 21 was filed more than 10 working days after EMD was notified of the initial adverse agency action, and it is, consequently, not for consideration.

Paul G. Dembling
Paul G. Dembling
General Counsel